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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,521	01/23/2004	Yves Berthiaume	086171-0307182	5354
909	7590	11/16/2005	EXAMINER	
PILLSBURY WINTHROP SHAW PITTMAN, LLP			LUM VANNUCCI, LEE SIN YEE	
P.O. BOX 10500			ART UNIT	
MCLEAN, VA 22102			PAPER NUMBER	
			3611	
DATE MAILED: 11/16/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,521

Applicant(s)

BERTHIAUME, YVES

Examiner

Lee Lum

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-16 is/are rejected.
- 7) ☒ Claim(s) 11, 12, 18 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. An Amendment was filed 8/29/05 in which Claim 17 was also cancelled.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 9, 10 and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Ohyama et al 6547024.

Ohyama discloses a vehicle (fig 1) comprising

Unitary frame F, engine F, straddle seats 10, 11, handlebar 6,

The frame including members (unidentified in fig 1) that may be separately manufactured (and then connected together),

The frame also including helmet bin 13 between the handlebar and seat 11 (i.e., bin is included within the area below the handlebar and seat, inclusively),

Front suspension including fork 8, and rear suspension, the latter including swingarm 40R (comprising elements 47 and 48) and shock absorber 19 (c4, ln 40-49),

The swing arm pivotally mounted to the frame at axis 27,

Front WF, and rear WR, wheels, the latter mounted on the swingarm,

CVT 17 including

Housing 18 that comprises at least one frame member 40L, the housing being lowest frame member, and,

A load transmitted to the frame by the swing arm is borne by the housing and shock absorber (inherent), and,

Drive 51, and driven 52, pulleys, and centrifugal clutch 54 coaxial with the latter, Gearbox 58 proximal with the driven pulley (fig 4).

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

A. **Claim 7** is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohyama.

Ohyama discloses the elements as provided above, but does not disclose the vehicle as having two front, and one rear, wheels. However, it is clear that the number of wheels is immaterial to the power train configuration. It would have been obvious to one with ordinary skill in the art at the time the invention was made to include the appropriate number of wheels for the specific application, in order to provide safety and comfort. The particular type of vehicle is one factor, of several factors, that dictates a certain and appropriate number of wheels.

B. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohyama in view of Gagnon.

Ohyama discloses the elements as provided above, but does not disclose the vehicle as having two each, front and rear wheels, while Gagnon shows this configuration with front 305, and rear 309, wheels. It would have been obvious to one with ordinary skill in the art at the time the invention was made to include this arrangement, as shown in Gagnon, to provide another type of frame structure, thus increase applicability. It is clear that the above-mentioned vehicle can comprise any number of wheels, and this particular feature is immaterial to the vehicle.

C. **Claims 15 and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohyama in view of Sakakibara et al 5052990.

Ohyama discloses the elements as provided above, but does not disclose the gearbox as planetary, while Sakakibara shows this type of gearbox 40, with its axis coaxial with that of the driven pulley 32, as depicted in fig 3.

While Ohyama's gearbox/transmission is functionally equivalent, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include another type of transmission, as shown in Sakakibara, as one that is well-known, readily-available and reliable, for a certain type of vehicle. This feature increases applicability. Prior art discloses various transmission configurations that are functionally equivalent.

4. ALLOWABLE SUBJECT MATTER

a. **Claims 11, 12 and 17-19** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Prior art does not disclose a vehicle as described above further comprising, *inter alia*, the swing arm pivot axis as substantially aligned with the driven pulley axis.

b. **Claim 20 is allowable** because prior art does not disclose a frame member for transmitting power from the engine to the wheel.

5. RESPONSE TO REMARKS

Examiner has modified the 102 rejection as provided above, where Ohyama obviates respective recited elements. She apologizes for the inconvenience. Applicant is asked to note allowable subject matter.

6. Communication with USPTO/Examiner

Any inquiry concerning this communication, or others, should be directed to Ms. Lum at 571 272 6649, M-F, 9-5. If attempts to reach the examiner are unsuccessful, her supervisor, Ms. Lesley Morris is at 571 272 6651. Our fax number is 703 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications: private PAIR only, for published applications: private or public PAIR. For more information re PAIR: <http://pair-direct.uspto.gov>. Questions re private PAIR: contact the Electronic Business Center (EBC) at 866 217-9197.

Ms. Lee S. Lum
Examiner
11/10/05



LESLEY D. MORRIS
REVISORY EXAMINER
TECHNOLOGY 3600